

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**ATLANTIC CITY ELECTRIC COMPANY,**

**Employer,**

**and**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 210,**

**Petitioner.**

**Case No. 04-RC-221319**

**MOTION FOR LEAVE TO RESPOND TO PETITIONER’S OPPOSITION TO  
ATLANTIC CITY ELECTRIC COMPANY’S REQUEST FOR REVIEW OF THE  
ACTING REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION**

Atlantic City Electric Company (“ACE” or the “Company”) respectfully requests leave to file a response to the Petitioner’s Opposition to the Company’s Request for Review of the Acting Regional Director’s Decision and Direction of Election (the “Union’s Opposition”). This response would not rehash the arguments that ACE presented in its Request for Review. Rather, this response would be limited to responding to the Union’s argument—which the parties’ stipulation directly contradicts—that the Company waived its right to seek review of the Acting Regional Director’s decision in this case.

1. The Union’s waiver argument is flatly contradicted by the stipulation executed by the parties on June 12, 2018 (“Stipulation”), which expressly reserved the Company’s right to file this Request for Review. The Stipulation clearly states that “**neither Party has waived its right to request review by the National Labor Relations Board in Washington, D.C.**” (Stipulation, at 3) (emphasis added). A true and correct copy of the Stipulation is attached hereto as Exhibit A (attachments omitted). It is equally clear that the parties’ Stipulation *only* related to

“facts” reflected in the testimony and exhibits entered in Case No. 04-RC-193066 (and certain numbered “facts” set forth in the Stipulation) while reserving all arguments regarding whatever findings may properly be based on those facts. In short, the plain language of the parties’ Stipulation refutes the Union’s current claim that the parties “stipulate[ed] to the prior matter’s facts *and findings*,” and that “the Employer *cannot now be heard to complain about the Region’s factual findings* when it willingly waived an opportunity to provide additional facts to bolster its position.” (Union’s Opposition, at 3) (emphasis added).

2. The parties’ Stipulation, captioned “Joint Stipulation *of Facts*” (emphasis added), obviously did *not* resolve what legal conclusions could appropriately be based on the stipulated record. Thus, the parties entered into the Stipulation for a limited purpose: to avoid expending additional time and resources creating a record that would include the same testimony and exhibits entered in the prior election case involving these same parties in 2017.

3. Nor is any waiver argument supported by the fact that the Employer did not request review of the Regional Director’s findings and conclusions in 2017. In the 2017 case, Case No. 04-RC-193066, the parties presented evidence on whether the system operators and senior system operators (“System Operators”) are supervisors within the meaning of Section 2(11) of the National Labor Relations Act. The Regional Director issued a Decision and Direction of Election on March 17, 2017, concluding that the System Operators were not supervisors. The System Operators ultimately voted against representation by the Union on March 27, 2017. Because the Union lost that election, there was no reason for the Company to seek review of the Regional Director’s Decision and Direction of Election in 2017.

4. On June 1, 2018, the Union filed another petition involving the same System Operators. Rather than re-litigate the issue of supervisory status, the parties stipulated on June 12, 2018 to the facts and evidence in the record in Case 04-RC-193066.

5. The Stipulation incorporates certain additional documents, such as the Company's June 11, 2018 Statement of Position. (Stipulation, at 2).

6. The Stipulation contains no agreement about the Regional Director's 2017 Decision and Direction of Election or its factual findings.

7. On June 15, 2018, the Acting Regional Director adopted the Regional Director's 2017 decision that the System Operators were not supervisors under the Act. On June 25, 2018, the Region conducted an election in which the System Operators voted in favor of joining the existing unit represented by the Union.

8. The Union's Opposition is clearly incorrect when it asserts that the Company "knowingly waived" the right to request review of the Acting Regional Director's decision. (Opposition, at 3). As stated above, the Stipulation makes clear that **"neither Party has waived its right to request review by the National Labor Relations Board in Washington, D.C."** (Stipulation, at 3) (emphasis added).

9. The Union further errs by asserting the Company should have filed a request for review following the Regional Director's decision in Case 04-RC-193066. This argument is in direct contravention of the Board's Rules and Regulations, which seek to avoid unnecessary litigation and, accordingly, provide that a party does not need to seek review of a Regional Director's decision that is mooted by a subsequent election. *See* 29 C.F.R. § 102.67.

WHEREFORE, in order to more fully address these clear errors in the Union's Opposition, ACE respectfully requests that the Company be permitted to submit a Response to

the Union's Opposition on the limited issue of the Union's erroneous waiver argument. To avoid any delay, ACE concurrently files its proposed Response, should such leave be granted.

Respectfully submitted on August 1, 2018,

/s/ Jonathan C. Fritts

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# EXHIBIT A

**1UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION FOUR**

ATLANTIC CITY ELECTRIC COMPANY	)	
	)	
Employer	)	
	)	
and	)	Case No. 04-RC-221319
	)	
INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, LOCAL 210	)	
	)	
Petitioner	)	
	)	

**JOINT STIPULATION OF FACTS**

Atlantic City Electric Company and the International Brotherhood of Electrical Workers, Local 210 (collectively “the Parties”) hereby agree that a hearing in Case No. 04-RC-221319 would adduce the same evidence regarding the supervisory status of the petitioned-for Systems Operators and Senior Systems Operators as in Case 04-RC-193066, a hearing on which was held on February 28, 2017, before Hearing Officer Barbara Mann at Region 4 in Philadelphia, Pennsylvania. Therefore, the parties waive the right to a new hearing in 04-RC-221319.

The Parties agree to stipulate to the following facts, as well as the testimony entered on the record in Case No. 04-RC-193066. The testimony in Case No. 04-RC-193066 is stipulated to be accurate and correct as applied to the employees at issue in this matter. The parties further stipulate to the admission of all exhibits described below:

1. The only issue in the case is the supervisory status of the Systems Operators and the Senior Systems Operators.
2. The formal documents in this case are marked and entered into the record as Board Exhibit 1, superseding Board Exhibit 1 in Case 04-RC-193066, and attached hereto.
3. To the extent that the formal documents in this proceeding do not correctly reflect the names of the parties, the parties hereby make a joint motion to the Regional Director to amend the petition and other formal documents to correctly reflect the names as set forth above.

4. The Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.
5. The Petitioner claims to represent the employees in the unit described in the petition herein and the Employer declines to recognize it.
6. There is no collective-bargaining agreement covering any of the employees in the unit sought in the petition herein and there is no contract bar or other bar to an election in this matter.
7. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board. Commerce facts are as follows:

Atlantic City Electric Company is a public utility incorporated in New Jersey, and engaged in the transmission and distribution of electric services, from its Atlantic Regional Office, Mays Landing Complex, located at 5100 Harding Highway, Mays Landing, NJ. Annually, in the course and conduct of its business operations, the Employer derives gross revenue in excess of \$250,000, purchases and receives goods valued in excess of \$50,000 directly from points outside the State of New Jersey, and provides services valued in excess of \$50,000 to institutions meeting the Board's direct jurisdictional standards.

8. If an election is directed, the election will be held on Monday, June 25, 2018, from 5:00 p.m. to 7:00 p.m., in Conference Room "C", on the first floor at the Employer's 5100 Harding Hwy., Mays Landing, NJ facility.
9. The parties agree that payroll is bi-monthly, and that the most recent payroll ending date is June 8, 2018. The next payroll ending date is June 23, 2018.
10. The parties agree that there is no need for foreign language ballots and translations.
11. The Petitioner waives having the eligibility list for the full 10 days and waives its right to file objections to the election based on the fact that it did not have the eligibility list for the full 10 days.
12. The Employer's Statement of Position, including the attachment to the Statement of Position and the current list of Systems Operators and Senior Systems Operators employed by the Employer at its Atlantic Regional Office (Mays Landing Complex) at 5100 Harding Highway, Mays Landing, NJ, are marked, entered into evidence, and attached to this stipulation in this case as Board Exhibit 2.

13. The remaining exhibits in Case No. 04-RC-193066 are marked and entered into evidence in this case with the same Exhibit identification numbers as in the previous case, and are relevant only to the extent that they address the issue of the supervisory status of System Operators and Senior System Operators, with the exception of Board Exhibits 1-3 in Case 04-RC-193066.
14. The parties understand that they do not have the right to file briefs in this matter.

**FURTHER STIPULATIONS/REQUESTS OF THE PARTIES**

1. The Parties stipulate that neither Party has waived its right to request review by the National Labor Relations Board in Washington, D.C. of the Decision issued by the Regional Director in this matter, Case No. 04-RC-221319.
2. The Parties agree that this Joint Stipulation of Facts, the transcript and exhibits in Case 04-RC-193066, and the stipulated exhibits attached to this document, shall constitute the entire record in this matter.

The Parties knowingly and voluntarily sign this Joint Stipulation of Facts and agree to be bound by such stipulations for purposes of Case No. 04-RC-221319 upon acceptance from the Hearing Officer.

FOR PETITIONER:

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By: /s/ Kevin D. Jarvis

Date: 6-12-18

FOR EMPLOYER:

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By: /s/ Julia S. Sturniolo

Date: 6-12-18

ACCEPTED BY:

/s/ Barbara Mann  
Barbara Mann, Hearing Officer  
National Labor Relations Board, Region 4

Date: 6-12-18